

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2324 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMANLAL JETHABHAI VAGHARI

Versus

P D VAGHELA

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Appearance:

MS KUSUM M SHAH for Petitioner

Mr. U.R.Bhatt, A.G.P. for the respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/06/96

ORAL JUDGEMENT

Ramanbhai Jethabhai Vaghari ( hereinafter referred to as "the detenu ), who is detained by an order dated 30-12-95 passed by the District Magistrate, Kheda ( hereinafter referred to as "the detaining authority" ) under sub-section (1) of section 3 of the Prevention of Anti Social Activities Act, 1985 ( hereinafter referred to as "the PASA Act" ) has challenged the said order of his detention by way of this petition under Article 226 of the Constitution of India.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three pending trial cases and one pending investigation case filed under the provisions of the Bombay Prohibition Act. The first three offences are of 1994 and the last one is of 1995. Over and above these cases, the detaining authority has also placed reliance on the statements of three witnesses for the alleged illegal and nefarious activities of the detenu. The detaining authority has claimed privilege and not disclosed the names and addresses of these witnesses to the detenu invoking the provision of section 9 (2) of the PASA Act. of the view that the Considering these materials, the detaining authority was of the view that the detenu is a "bootlegger" within the meaning of section 2 (b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Miss K.M.Shah, learned Advocate, appearing for the petitioner, has contended that there was gross delay in passing the detention order and, therefore, the order of detention is vitiated. In my view, since the petition is required to be allowed only on the ground of delay in passing the order of detention, it is not necessary to refer to the other contentions raised by her.

There is no dispute to the fact that the proposal to detain the petitioner was moved by the Senior Police Sub-Inspector, Anand Rural Police Station by letter dated 2-8-1995 addressed to the detaining authority. The detaining authority has passed the impugned order of detention on 30-12-1995. Thus there was a time-lag of nearly five months between the date of the proposal made by the PSI, Anand Rural Police Station and the order of detention passed by the detaining authority. The Supreme Court in Pradeep Nilkanth Paturkar vs Ramamurthi and others AIR 1994 SC 656 set aside the order of detention on the ground of delay. In that case, the order of detention was passed on the basis of some criminal cases registered against the detenu and also on the basis of the statements of witnesses. The order of detention was passed after five months and 8 days from registration of last case and more than 4 months from submission of the proposal. In that case the statements of witnesses referred to in the grounds of detention were obtained

after the detenu was released on bail in all the cases. The Supreme Court, in view of these facts, held that the unexplained delay from the registration of the last case and the submission of the proposal was fatal. In the instant case also, there is an unexplained delay of four months and 28 days from the date of making of the proposal for detention and the date of passing the order of detention. Following the decision of the Supreme Court in Pradeep Nilkanth Paturkar's case therefore this petition is required to be allowed.

In the result, this petition is allowed. The order of detention dated 30-12-1995 is quashed and set aside. The detenu Ramanbhai Jethabhai Vaghari is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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